

**MINUTES OF THE
CITY PLANNING COMMISSION
APRIL 21, 2006
J. MARTIN GRIESEL CONFERENCE ROOM
TWO CENTENNIAL PLAZA – SUITE 700
805 CENTRAL AVENUE**

CALL TO ORDER

Mr. Mooney called the meeting to order at 9:07 a.m.

Commission Members:

Present: Donald Mooney, James Tarbell, Terry Hankner, and David Rager

Community Development and Planning Staff: Margaret Wuerstle, Bonnie Holman, Caroline Kellam, Jennifer Walke

Law Department:
Julia Carney

APPROVAL OF MINUTES

Submission of the minutes from the April 7, 2006 Planning Commission meeting for approval.

Motion:	Ms. Hankner moved approval of minutes.
Second:	Mr. Tarbell
Ayes:	Mr. Mooney, Mr. Tarbell, Ms. Hankner, and Mr. Rager
Nays:	None, motion carried

CONSENT ITEMS

- ITEM #1** A report and recommendation on the sale of property to Middle Earth 327 West Fourth Street L.L.C.
- ITEM #2** A report and recommendation on the sale of Elsinore Avenue north of Wareham Drive
- ITEM #3** A report and recommendation on accepting an easement for pedestrian use through property located at 525 Vine Street granted by 525 Vine Street, LLC.
- ITEM #4** A report and recommendation on a Plat of Subdivision, Record Plat, for the Elizabeth T. Bley Subdivision, Phase 4, located east of Hackberry Avenue and north of E. McMillan Street in the neighborhood of East Walnut Hills.
- ITEM #5** A report and recommendation on a Plat of Subdivision, Record Plat, for the Villages of Daybreak Subdivision – Phase 3A, located south of Seymour Avenue, west of Rhode Island Avenue and north of Langdon Farm Road in the neighborhood of Bond Hill.

Mr. Tarbell had a question on item #1 regarding parking.

In response to Mr. Tarbel's question, Mr. Jeff McElravy stated that there would be no net loss of parking spaces.

Motion: Ms. Hankner moved approval of Consent Items #1 - #5.
Second: Mr. Rager
Ayes: Mr. Mooney, Mr. Tarbell, Ms. Hankner, and Mr. Rager
Nays: None, **motion carried**

DISCUSSION ITEMS

ITEM #6 A report and recommendation on a revision to The Banks Planned Development Concept Plan and Development Program Statement.

Ms. Margaret Wuerstle, Chief Planner, presented this item.

BACKGROUND:

On February 16, 2006, the Planning Commission approved a zone change on The Banks property from a DD-D zoning district to a PD – Planning Development district. The Hamilton County/Cincinnati Central Riverfront Urban Design Master Plan was to serve as the Concept Plan and Development Program Statement for The Banks Planned Development District. This plan would provide the conceptual baseline on which future development plans for The Banks would be reviewed and approved. There are two blocks within the Hamilton County/Cincinnati Central Riverfront Urban Design Master Plan that conflict with the approved plan for the Central Riverfront Park. The Hamilton County/Cincinnati Central Riverfront Urban Design Master Plan for these two blocks (blocks 10 and 12) should be changed so that they are consistent with the current plans for the park.

The original Central Riverfront Park Plan was approved by the Park Board in 1999 and is the plan which Congress has authorized the US Army Corps of Engineers to follow for design of the park. It is also the basis for the City's current Federal request to authorize park construction and to appropriate the first \$8 million of Federal funds for the construction of the park. The Park Board, Recreation Commission, Urban Design Review Board and the City Planning Commission previously approved this 1999 plan.

The Hamilton County/Cincinnati Central Riverfront Urban Design Master Plan was approved in 2002 and incorporated the 1999 Central Riverfront Park Plan. In the last six years, the park plan has evolved. In the Park Board's work with the Corps of Engineers, 3CDC, the Port Authority, the City administration, the County, and various stakeholders, it became clear that construction of restaurants and retail in block 12 as per the Hamilton County/Cincinnati Central Riverfront Urban Design Master Plan were not appropriate. Any buildings at this location would have to be built on structures raised at least 12' above Mehring Way to avoid seasonal flooding. This would make servicing and access difficult and would likely be a visual intrusion for the park. Furthermore, this property was donated to the Park Board as parkland and cannot have private commercial uses built on it. The Hamilton County/Cincinnati Central Riverfront Urban Design Master Plan also proposes a "boardwalk" that would cross Mehring Way on a diagonal at least 15' above grade and connect to more commercial uses on Block 10. The Park Board, City and 3CDC agreed several years ago that the original boardwalk concept was inappropriate and was not likely to succeed economically. The boardwalk crossing Mehring Way would be a visual intrusion and the retail too far removed from the rest of The Banks to successfully draw pedestrian traffic.

On March 16, 2006 the Park Board approved an updated Central Riverfront Park Plan, which incorporated all of the design changes since the plan was first approved in 1999. The intent was to also modify the Hamilton County/Cincinnati Central Riverfront Urban Design Master Plan to be consistent

with the approved Central Riverfront Park Plan. The Park Board would like to have these changes made to the Hamilton County/Cincinnati Central Riverfront Urban Design Master Plan prior to any actions that would alter the zoning of The Banks property.

Description of Approved Changes:

The 2006 Central Riverfront Park Plan is consistent with the original park program and generally consistent with the approved 1999 park plan. Changes to the plan have been the result of design refinements, on-going work with the US Army Corps of Engineers, and dialogue with the Port Authority, County staff, 3CDC and various stakeholders. The changes are as follows:

1) Change in grade to section of park north of Mehring Way - This part of the park was conceived in the 1999 plan as primarily event space, though it was also to contain a playground, rows of trees and water features. It was to be at the grade of Mehring Way, which meant it was approximately 15 to 17 feet below the grade of Ted Berry Way and the rest of The Banks development, and it was within the flood plain. After careful consideration and much discussion with 3CDC, the Port and the design team, it was determined that the park would be much better served if this area were at the same level as the rest of The Banks. This moved the playground, carousel, and water features out of the flood plain, and brought an entire section of the park up to the same elevation as The Banks. This brings a part of the park closer to downtown and closer to everyday park users.

2) Changes to Festival/Event Space - Festivals and events were planned to take place on the great lawn south of Mehring Way and on Mehring Way itself when the street would be closed for such major activities. Events were also to take place in the section of the park north of Mehring Way as described above. At the same time as discussions were taking place about the benefits of raising this section of park to the elevation of Ted Berry Way and The Banks, there were also further discussions about the extent and nature of event space requirements in the park. Considering the existing event space in riverfront parks and at recreation sites, and also considering the many events that occur within downtown streets, a decision was made to reduce the size of the primary event space. In the revised plan, event lawns are proposed on both Block 11a and 11b, but both spaces are reconfigured to incorporate more park activities when no event is taking place. The great lawn and Mehring Way are still intended to accommodate major events.

3) Change in location of restaurant - The original plan showed a restaurant south of Mehring Way at the foot of Race Street. It should be noted that even at the time of the park plan approval in 1999, there were concerns about this location due to flooding and also due to structures south of Mehring interfering with the flow of open space along the river. As described below, the current plan moves the restaurant to Block 11 which is totally out of the flood plain and which brings the restaurants closer to The Banks and downtown.

4) Addition of pavilions in the park – Park-owned commercial structures are now proposed in the upper section of the park (Blocks 11a and 11b) to provide places for visitors to eat and drink. This is seen as an important service that will bring more people and year-round activity to the park, as well as generate revenue to offset operating costs.

5) Change in location of several features: The site of the playground, carousel and water features have changed slightly from the 1999 plan. The major fountain has been moved away from the river to a higher location to avoid frequent flooding. One of the playgrounds and the carousel location have also been moved out of the flood plain, while

one of the play areas remains within the flood plain, though relocated south of Mehring Way.

6) Change in location of Maintenance compound and parking - The 1999 park plan proposed a park maintenance facility and parking facilities at the west end of the park. Since it is anticipate that this phase will not be implemented for many years, the maintenance facility and parking are now proposed to be incorporated in Phase 1 and located below the lawn feature on Block 11b and accessed from Mehring Way.

7) Decks - No decks over Fort Washington Way were shown in the 1999 park plan. The idea of decking several sections of Fort Washington Way were conceived in the Hamilton County/Cincinnati Central Riverfront Urban Design Master Plan and the Park Board worked with stakeholders to come up with conceptual designs for the surface of the decks, with the understanding that the infrastructure of the decks themselves would be a part of the budget for The Banks and the riverfront street grid, not the park. In discussions over the last few years with 3CDC and stakeholders, the deck idea was modified to consider only a single deck between Vine and Walnut, immediately north of the Freedom Center. The locations of the other proposed decks would instead become development sites. As development sites, buildings would ultimately be built as air-right structures, extending the downtown grid of streets, and sidewalks.

FINDINGS

The above-described changes to the park master plan were carefully thought out and are the result of several years of design study and stakeholder discussion. They will enhance the park experience as well as increase the park's sustainability. They are also consistent with the original intent of the park program and the intent of the original park design.

RECOMMENDATION:

Staff recommended that the City Planning Commission take the following actions:

1. Approve the revisions to the Central Riverfront Park Plan as approved by the Park Board on March 16, 2006;
2. Approve an update to the Hamilton County/Cincinnati Central Riverfront Urban Design Master Plan that would replace the 1999 Central Riverfront Park Plan with the 2006 revised Central Riverfront Park Plan;
3. Approve the updated Hamilton County/Cincinnati Central Riverfront Urban Design Master Plan with the 2006 revised Central Riverfront Park Plan as the Concept Plan and Development Program Statement for the Banks Planned Development District.

DISCUSSION

Ms. Wuerstle gave an overview of the staff recommendations regarding the revision to The Banks Planned Development Concept Plan and Development Program Statement.

Motion:	Ms. Hankner moved approval of the 3 staff recommendations
Second:	Mr. Rager
Ayes:	Mr. Mooney, Mr. Tarbell, Ms. Hankner, and Mr. Rager
Nays:	None, motion carried

OTHER BUSINESS:

ITEM #7 Report on Zoning Code – Definition of Public Nuisance

Ms. Margaret Wuerstle, Chief Planner, presented this item.

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED DOCUMENT

TO: Michael L. Cervay, Director, Community Development & Planning

FROM: J. Rita McNeil, City Solicitor

COPIES: Margaret Wuerstle, Chief Planner

SUBJECT: Zoning Code – Definition of Public Nuisance

This memorandum is in response to your request, dated December 22, 2005, regarding “public nuisance” as it relates to the Cincinnati Zoning Code. Specifically, you requested that the Law Department provide either: 1) a definition of “public nuisance,” or 2) an explanation of why no definition should be included in the Zoning Code, with an amendment to the code to refer to other sections of the Cincinnati Municipal Code specifically regulating public nuisances.

“Public nuisance” appears in Section 1400-05© as follows:

Public Nuisance. Neither the provisions of this Chapter nor the approval of any permit authorized by the Cincinnati Zoning Code authorizes the maintenance of any public nuisance.

However, “public nuisance” is not defined in the Zoning Code. The purpose of Section 1400-05© is merely to provide notice to the public that using a property in a manner that is permitted under the Zoning Code will not be a defense to an action for maintaining a public nuisance. Under common law, the State of Ohio has the authority to abate public nuisances, which authority is extended to municipalities under the Home Rule provision of the Ohio Constitution. Under such provisions, a charter city may enact legislation authorizing any necessary abatement of public nuisances and the destruction of property used in maintaining such nuisances. *Solly v. Toledo*, 7 Ohio St.2d 16 (1966).

The current Zoning Code and the previous Zoning Code intentionally omitted the type of general definitions of “public nuisance” you requested because it was never the intention of the City to use the Zoning Code as a tool to regulate public nuisances. Instead, when City Council has determined it advisable, detailed provisions regulating specific types of nuisances have been included in different sections of the Cincinnati Municipal Code. Additionally, the strong possibility exists that if a definition of “public nuisance” is included in the Zoning Code, that Buildings and Inspections would become the arbiter of neighborhood disagreements.

The Solicitor’s Office additionally advises against amending Section 1400-05© to include references to all of the other provisions in the Cincinnati Municipal Code relating to public nuisances. A use that is permitted by the Zoning Code could nonetheless constitute a common law “public nuisance” that is not covered in the Municipal Code. If Section 1400-05© is limited to only those nuisances that appear elsewhere in the Municipal Code, the party maintaining the nuisance could use permissibility of a use as a defense.

Conclusion

It is therefore recommended that a definition of public nuisance should not be included in the Zoning Code. Additionally, Section 1400-05© should not be amended to include existing public nuisance references in the Municipal Code. This will help to avoid unintended consequences regarding potential defenses to public nuisance violations under common law.

Assistant Solicitor Dotty Carman will continue to assist you regarding this matter, and can be reached at extension 1575.

DISCUSSION

Ms. Wuerstle explained that the reason this item was on the agenda was because the definition of public nuisance had previously been presented to the Commission as a text amendment to the Zoning Code at the request of zoning staff. At that time, the Law Department requested that the Commission hold this item in order to allow additional research. The memorandum is the Law Department's response. The Law Department does not feel that there should be a definition of "public nuisance" in the Zoning Code. The Commission agreed with the conclusion of the Law Department that a definition of public nuisance should not be in the Zoning Code. No formal action was required by the Planning Commission.

BY-LEAVE

ITEM #8 Proposed text amendment to §1419-21. Limited or Full Service Restaurant. Proposed text amendment to §1425-19-A. Off Street Parking and Loading Requirements.

By-Leave item #8 was allowed to be heard by a concurrence of the Board.

Ms. Margaret Wuerstle, Chief Planner, presented this item.

PURPOSE:

To obtain input and direction from the Planning Commission on zoning text as it relates to outdoor areas of limited or full service restaurants and/or drinking areas.

PROPOSED TEXT AMENDMENT:

§ 1419-21. Limited or Full Service Restaurants and Drinking Establishments.

Outdoor ~~eating~~ areas of limited or full service restaurants and drinking establishments must be located, developed and operated in compliance with the following:

- (a) Residential District Boundary Line. For the purposes of this section the term "residential district boundary line" shall mean the district boundary line of the SF-20, SF-10, SF-6, SF-4, SF-2, RMX, RM-2.0, RM-1.2, and RM-0.7 districts.
- (b) **Location.** Outdoor ~~eating~~ areas on any public sidewalk or alley requires a revocable street privilege.
- (c) **Maximum Size.** Within 500 feet of a residential district boundary line. ~~The outdoor eating area may not exceed 25 50 percent of the indoor eating area accessible to the public, excluding other space not accessible to the public.~~ Additional area requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.
- (d) **Barriers.** Decorative walls or fencing must enclose an outdoor ~~eating~~ area.

- (e) ~~**Alcoholic Beverages.** The provision of alcoholic beverages must be secondary and accessory to the provision of food.~~
- (f) ~~**Cooking Facilities.** Cooking facilities may not be located in outdoor eating areas.~~
- (g) ~~**Live Entertainment.** Live entertainment may not be presented in outdoor eating areas.~~ Within 500 feet of a residential district boundary line, entertainment, including the use of audio/visual equipment or amplified sound is prohibited unless conditional use approval is obtained pursuant to the procedures and criteria of Chapter 1445, Variance, Special Exceptions and Conditional Uses.
- (h) **Fixtures.** Furniture and fixtures provided for use in an outdoor eating area may consist only of movable tables, chairs, umbrellas, planters, lights and heaters. Lighting fixtures may be permanently affixed onto the exterior front of the building. All movable furniture and fixtures must be removed during the off-season.
- (i) **Hours of Operation.** Within 50 feet of a residential district boundary line ~~The~~ use of outdoor ~~eating~~ areas is prohibited between ~~11~~ 10-PM ~~Midnight~~ and 7 AM on ~~weekends~~ Friday and Saturday and ~~10~~ 9-PM and 7 AM on ~~weekdays on all other days unless conditional use approval is obtain pursuant to Chapter 1445 Variance, Special Exception and Conditional Uses.~~ In all other locations, the use of outdoor areas shall be prohibited after 2:00 AM.
- (j) **Breweries and Wineries.** Beer and wine production accessory to a limited or full service restaurant is limited to an area that may not exceed 10,000 sq. ft and may not produce any objectionable odor, dust or fumes.
- (k) **Required Buffer Yards.** Where any side or rear yard of the permitted use abuts a residential district boundary line, a 10 foot buffer area ensuring visual and sonic separation shall be provided.pursuant to Chapter 1423-03 Landscaping Plan.
- (l) **Parking Requirements for Outdoor Areas.** Off-street parking shall be calculated at 1 space per 300 square feet of outdoor floor area. Off-street parking facilities must be made permanently available to the use served.

JUSTIFICATION:

On December 16, 2005 the Planning Commission made recommendations to City Council on text changes to the Zoning Code for the regulation of outdoor eating and drinking areas. The Economic Development Committee of City Council held a public meeting on the proposed text changes on February 6, 2006. Based on comments received during the public meeting, revised text changes were submitted by Councilmember Chris Bortz and Councilmember David Crowley for consideration by the Planning Commission. The Planning Commission tabled the changes proposed by Councilmember Bortz and Councilmember Crowley at the March 3, 2006 meeting until a meeting could be scheduled to discuss the impact of the proposed changes. Text amendments resulting from the meeting with the Councilmembers, Planning staff and Planning Commission Chair, Caleb Faux were submitted to the Planning Commission for consideration at the March 17, 2006 meeting. The Planning Commission did not recommend approval of the text amendments as proposed. Instead, the Commission further revised the sections on Location, Maximum size, and Hours of Operation before recommending approval of the text amendments to §1419-21 of the Zoning Code. These revised text amendments were submitted to the Economic Development Committee for a public hearing on April 17, 2006. Councilmember Bortz and Councilmember Crowley have requested that the above text amendments be submitted to the Planning

Commission as a By-Leave item at the April 21, 2006 meeting. These text amendments are the same amendments that were submitted to the Planning Commission at the March 17, 2006 meeting with one exception. The Hours of Operation were changed from 10:00 PM to Midnight on Friday and Saturday and from 9:00 PM to 10:00 PM on all other days. The Councilmembers respectfully requested that the Planning Commission recommend approval of the above amendments to §1419-21 Limited or Full Service Restaurants and drinking Establishments.

DISCUSSION

Ms. Wuerstle stated that this proposed text amendment is essentially the same version that was presented to the Planning Commission at the March 17, 2006, meeting. At that time, the Commission made revisions to the amendment and sent it back to City Council. A public hearing was held on Monday, April 17, 2006 on the Commission approved version of the March 17th text amendment. The Economic Development Committee decided to indefinitely postpone the Commission's amendments to the March 17th version. The Economic Development Committee sent back to the City Planning Commission their original version of this text amendment with one additional change for consideration. The additional change was in the hours of operation section. The hours of operation were changed to midnight on Friday and Saturday and to 9 PM on all other days.

Ms. Wuerstle provided the Commission with the previous version of the amendments and summarized the changes that it contained. She then pointed out the differences in the proposed text amendment and the original version of March 17, 2006.

Mr. Carl Uebelacker, stated that he supported the Commission's approved version of the March 17th text amendments and felt that it was a reasonable compromise. He suggested that the Planning Commission hold this item and request that staff do a definitive comparison of the proposed zoning code in Cincinnati to Covington, Newport, Blue Ash and two other comparable sized cities in Ohio or the Mid-West. He also suggested an analysis of the conditional use applications over the last two years. The focus of the analysis should be the percentage of applications that were approved, approved with conditions and denied. Mr. Uebelacker stated that it is his belief that most conditional use applications are approved but with conditions that protect the residential environment.

Ms. Wuerstle stated that staff did do a study of Newport, Covington, Blue Ash and Norwood in regards to the regulation of outdoor entertainment areas. Staff determined that if the March 17th text amendments approved by the Commission were passed by City Council then Cincinnati would be the least restrictive City in their regulation of outdoor areas.

Mr. Dave Zimmerman, Treasurer of the Mt. Adams Association, stated that he supported the Commission's approved March 17, 2006 version of the text amendments and was disappointed that City Council had not approve it.

Ms. Gerry Kraus, member of the North Avondale Neighborhood Association, stated that although she was originally against any change, she now supported the March 17, 2006 version of the text amendments as revised by the Planning Commission. She also said that she is counting on the Planning Commission to do what is best for all the people, not just business interests.

Mr. Steve Slack, Clifton Housing and Zoning Committee, stated that he supported the March 17, 2006 version of the text amendments as revised by the Planning Commission. He specifically mentioned that he did not support the later operating hours on the April 21, 2006 version of the text amendments.

Mr. Marvin Kraus, Cincinnati resident, stated that historically, zoning was created to protect residential districts. He supported the March 17, 2006 version of the text amendments as revised by the Planning Commission.

Mr. Tarbell recommended the following new compromise to By-Leave Item #8: in section (i) Friday and Saturday closing time would be midnight; and in section (c) within 100 feet of a residential boundary line; the maximum size of the outdoor area would be 50% of the indoor area.

Ms. Hankner and Mr. Mooney stated that they supported changing the closing time on Friday and Saturday to midnight but could not support the other revision.

Motion: Ms. Hankner moved disapproval of By-Leave Item #8
Second: Mr. Rager
Ayes: Mr. Mooney, Mr. Tarbell, Ms. Hankner, and Mr. Rager
Nays: None, **motion carried**

Explanation for the recommendation of disapproval:

The City Planning Commission understood that the majority of conditional use applications are approved. Since it is not possible to write zoning regulations to address every possible situation, providing the option of conditional use approval ensures protection for residential areas and flexibility for business owners. The conditional use option will provide the Hearing Examiner the opportunity to look at properties on an individual basis, determine the compatibility of an outdoor area and provide for any mitigating measures to ensure compatibility of the uses. Mr. Mooney stated that by providing for conditional use approvals the Commission ensured sensitivity to residential areas and the option of providing buffers.

Motion: Ms. Hankner motioned to amend the March 17, 2006 version of the text amendment that was previously approved by the Commission to read (i)...the use of outdoor areas is prohibited between Midnight and 7 AM on Friday and Saturday...
Second: Mr. Rager
Ayes: Mr. Mooney, Mr. Tarbell, Ms. Hankner, and Mr. Rager
Nays: None, **motion carried**

Motion: Mr. Tarbell motioned to amend the March 17, 2006 version of the text amendment that was previously approved by the Commission to read (i) ...and 10 PM and 7 AM on all other days unless conditional use approval is obtained...
Second: Ms. Hankner
Ayes: Mr. Mooney, Mr. Tarbell, Ms. Hankner, and Mr. Rager
Nays: None, **motion carried**

Motion: Ms. Hankner moved approval of the March 17, 2006 version of the proposed text amendment that was previously approved by the Commission, with the two revisions just approved.
Second: Mr. Rager
Ayes: Mr. Mooney, Mr. Tarbell, Ms. Hankner, and Mr. Rager
Nays: None, **motion carried**

ADDITIONAL BUSINESS

Mr. Carl Uebelacker acknowledged that this was Ms. Hankner’s last Planning Commission meeting. He asked that Ms. Hankner be recognized for her service on the City Planning Commission. He stated that as a representative of the community he appreciated her serious consideration of all aspects of zoning changes and stated that she would be missed at the Planning Commission meetings.

ADJOURN

- Motion:** Ms. Hankner motioned to adjourn.
- Second:** Mr. Rager
- Ayes:** Mr. Mooney, Mr. Tarbell, Ms. Hankner, and Mr. Rager
- Nays:** None, **motion carried**

Margaret A. Wuerstle, AICP
Chief Planner

Caleb Faux, Chair

Date: _____

Date: _____